

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2178 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LABH CONSTRUCTION & INDUSTRIES LIMITED

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR SN SOPARKAR for Petitioners
MR MANISH R BHATT for Respondent No. 1 to 5
MR KAMAL MEHTA, learned Asst. Govt. Pleader with
MR PG DESAI, learned Government Pleader

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.C.PATEL

Date of decision: 12/08/1999

ORAL JUDGEMENT (Per Patel, J.)

Mr. Soparkar, learned advocate seeks permission
to delete respondents No. 6 to 11. Permission granted.

Rule. Mr. Bhatt, learned advocate waives
service of rule.

2. The present petition is preferred against six orders of assessment pertaining to stolen cash. The copies of the Assessment Orders are placed on record.

3. The petitioners have come out with a case that their cash amount of Rs.22,35,000/- was handed over to Harin K. Shah. The said Mr. Harin K. Shah filed a complaint before the policed interalia alleging that 7 persons apprehended and looted a sum of Rs.5000/-. After few days, in his further statement, the amount looted was increased to Rs.22,35,000/-. We are not here to appreciate the facts and circumstances of the case as the Court competent to try the accused has passed an order of acquittal after recording the evidence. The amount was claimed and ultimately that was the subject matter of proceedings before this Court wherein at the admission stage, in Criminal Revision Application No. 418 of 1996, learned Single Judge (Coram: K.J. Vaidya, J., as he then was), on 27.12.1996 opined that remedy would be available under the facts and circumstances of the case before the Income Tax Officer and permitted the petitioner of that Criminal Revision Application to make an appropriate application to the concerned officer regarding the return of the cash and directed that the same shall be decided on merits and according to law, within a period of one month from the date of the application. The grievance made by the petitioner in this petition is that the petitioners were not given an opportunity of hearing, and without hearing the petitioners, the orders have been passed.

4. During the hearing of this matter, the police officers who conducted investigation in this matter were summoned by the Government Pleader. They produced before us a bunch of records including the statement of the accused, which have been returned to them. We are not sitting in appeal over the order passed by the learned Single Judge. Therefore, on merits, we would not like to say anything. Suffice it to say that rules of natural justice requires that the petitioners ought to have been heard before passing any orders affecting them, more particularly when the learned Single Judge has directed the department to decide the application. However, it seems that the assessing officer was of the wrong notion that the moment there is an order of acquittal, the property which is alleged to have been stolen ceases to be a stolen property and the persons from whom the property recovered become the owners of the property. Merely because the prosecution has not been able to prove the charge pertaining to property in the instant case

levelled against the accused in a criminal trial resulting into their acquittal, it does not mean that the amount belongs to the persons from whom the same was recovered, more particularly when the accused themselves have stated in their statements that the property was stolen. The question is required to be considered in accordance with law.

5. For the reasons recorded hereinabove, we direct the assessing officers to pass the orders after hearing the petitioners. It would be open for the assessing officers to summon the police officers to remain present with the papers of investigation including the statement of the accused. Government Pleader appearing in the matter has assured that the police officers shall remain present before the assessing officer without fail on issuance of summons by the Income Tax Department. We direct that the Assessing Officers shall pass appropriate orders after hearing the petitioners and taking into consideration the police papers. In the result, 6 block assessment orders passed in this case, copies of which are produced before us, are quashed and set aside. As a consequence of this order, there is no question of refund of the amount at this stage.

6. This petition stands disposed of with the aforesaid directions. Rule is made absolute accordingly, with no order as to costs.

csm./ -----